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# State v. Garrett Appellant's Brief Dckt. 43033

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 43033
	)	
v.	)	ADA COUNTY NO. CR 2012-16151
	)	
NICHOLAS JAMES GARRETT,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Nicholas James Garrett appeals from the district court's order revoking his probation. He asserts that probation was achieving its rehabilitative purpose and, therefore, the district court abused its discretion when it revoked probation.

Statement of the Facts & Course of Proceedings

In 2012, Mr. Garrett pleaded guilty to one count of burglary. (R., p.36). The district court imposed a sentence of ten years, with two years fixed, and retained jurisdiction. (R., p.37.) Following a successful rider, the district court placed Mr. Garrett on probation for ten years. (R., p.51.)

In 2014, a report of probation violation was filed alleging that Mr. Garrett violated his probation by committing a robbery, using morphine, and failing to pay fees and restitution. (R., p.59.) The robbery charge was ultimately dismissed. (Tr., p.6, Ls.11-12.) Mr. Garrett admitted to violating his probation by using morphine, and the other allegations were dismissed. (R., p.59; Tr., p.6, Ls.6-8.) The district court revoked Mr. Garrett's probation and imposed the original sentence. (Tr., p.23, Ls.14-18.) Mr. Garrett filed a Rule 35 motion requesting leniency, which the court denied. (R., p.95.)<sup>1</sup>

Mr. Garrett filed a timely Notice of Appeal from the order revoking probation. (R., p.88.)

## ISSUE

Did the district court abuse its discretion when it revoked Mr. Garrett's probation?

## ARGUMENT

### The District Court Abused Its Discretion When It Revoked Mr. Garrett's Probation

Whether a willful violation of a condition of probation justifies revoking probation "is a question addressed to the judge's sound discretion." *State v. Adams*, 115 Idaho 1053, 1054 (Ct. App. 1989). However, "a judge cannot revoke probation arbitrarily." *Id.* at 1055. "[P]robation may be revoked if the judge reasonably concludes from the defendant's conduct that probation is not achieving its rehabilitative purpose." *Id.* Further, I.C. § 19-2601(4) gives the district court the discretion to revoke a defendant's probation, suspend his sentence, and retain jurisdiction so that he can participate in

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<sup>1</sup> Mr. Garrett is not challenging on appeal the district court's order denying his Rule 35 motion.

treatment and programming.

The appellate court “defers to the trial court’s decision unless an abuse of discretion is demonstrated.” *Adams*, 115 Idaho at 1055. This Court must consider the entire record, including the defendant’s conduct before and during probation, *State v. Chapman*, 111 Idaho 149, 153–54 (1986), and must take into consideration the four goals of sentencing: the protection of society, deterrence, rehabilitation, and retribution, *State v. Pierce*, 150 Idaho 1, 5–6 (2010).

Although Mr. Garrett made some mistakes on probation, probation was achieving its rehabilitative purpose. Mr. Garrett’s probation officer said that he had a good attitude and that he was not a problem. (Tr., p.14, Ls.11-14.) When a warrant went out for his arrest on the probation violation, he turned himself in on a Sunday as was requested. (Tr., p.14, Ls.14-16.) Mr. Garrett is only 25 years old (Presentence Investigation Report (“PSI”), p.1)<sup>2</sup>, but he showed maturity and insight during his disposition hearing. He expressed to the court that he recognizes he has been selfish and his bad choices have affected not just himself, but his family as well. (Tr., p.16, Ls.4-13.) Mr. Garrett has three young children and does not want them to grow up without a father. (Tr., p.16, Ls.8-13, PSI, p.8.) He is committed to change, and is willing to participate in treatment. (Tr., p.16, Ls.14-21.) Given his age, remorse, and willingness to participate in treatment, Mr. Garrett contends that the district court abused its discretion when it revoked his probation.

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<sup>2</sup> For ease of reference, PSI page numbers refer to the electronic PDF document titled, “Garrett 43033 psi.”

CONCLUSION

Mr. Garrett respectfully requests that his case be remanded to the district court for a new disposition hearing.

DATED this 1<sup>st</sup> day of October, 2015.

\_\_\_\_\_/s/  
ERIC D. FREDERICKSEN  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 1<sup>st</sup> day of October, 2015, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

NICHOLAS JAMES GARRETT  
INMATE #106401  
SICI  
PO BOX 8509  
BOISE ID 83707

DEBORAH A BAIL  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

BRIAN C MARX  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

KES/eas